

Hearing for hearing?

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«...There are facts of overt neglect and violation of laws, also by state executive bodies... Censorship, open and hidden, is aiming not at protection of principle state interests, but at protection of interests and image of certain political forces and politicians <...> Facts of persecution of journalists for their professional and creative activities, including assaults on them and attacks on their property, are becoming increasingly common.» This statement represents the Recommendations of participants of the 1st Parliamentary Hearing on the status of freedom of speech in Ukraine on April 10, 1997.

According to then chairman of the Parliamentary Committee for Freedom of Speech Ivan Chyzh, «in 1997 in Ukraine the total [claims made] in lawsuits against the media and journalists amounted to UAH 90 billion, and the courts did make them pay UAH 1.5 million (Vechirniy Kyiv, December 14, 1999).

The situation continued to deteriorate: «... in Ukraine, with the help of the executive authorities, as well as the Office of Attorney General and some courts, there has been increasingly common practice of persecution of the opposition [media] and other media [and] their officials that have been critical about the state executive bodies... Political censorship has in fact been spread by various means,» read the parliament's Resolution «On Activity of the Cabinet of Ministers of Ukraine, Other Bodies of State Power in Terms of Ensuring Freedom of Speech, Providing for Information Needs of the Society and Development of the Information Sphere in Ukraine» (February 16, 1999). The Resolution became one of the key documents discussed during the three-day parliamentary hearing in April 1999. Then, according to most of those who took the floor at the session, information policy was mainly based on «the telephone law and censorship scissors» (Den, April 13, 1999).

«Lately, we have witnessed attempts to introduce political censorship at the national level as well as locally; the pressure of state authorities on the media in order to make them change their political course; destruction of the media with claims of unjustifiably high compensation for moral damages; manipulation of mass consciousness; selective support by the state power, and creation of uneven operating conditions for information subjects,» Oleksandr Zinchenko (SDPU (o)), chairman of the Parliamentary Committee for Freedom of Speech and Information and a major shareholder of the Inter, a national TV channel, stated in his report to the parliament on «Problems of Information Activity, Freedom of Speech, Compliance with the Law and the Status of Information Security of Ukraine» on January 16, 2001.

All in all, according to the Association of Journalists of Ukraine and the Parliamentary Committee for Freedom of Speech and Information, in 1999 alone the media were challenged with 2,258 lawsuits that claimed the total of over UAH 90 billion as compensation of «moral damages». The amount is almost three times as much as the Ukraine's national budget.

However, the lawsuits are by far not the only problems with the media freedom in Ukraine, linked to the general lack of respect for human rights, constitutional guarantees and laws in this state. The above quotation of Mr. Zinchenko's speech to the parliament contains only one inadequate word: «lately». As a few recent years have demonstrated, the problem has deteriorated into a major chronic disability that has transformed the Ukrainian «fourth estate» into a badly dependent, ailing and paralyzed sphere.

Supposedly, it goes without saying that «the Ukrainian law guarantees freedom of speech. However, while everything is more or less OK here with the freedom of public expression, the [ability] to receive unbiased information depends mostly on a specific politician, state official or media owner,» Speaker of the Ukrainian parliament Ivan Pliushch argued at the recent parliamentary hearing. The reference to «some media owner» in the context of ability of the media to provide accurate and unbiased information does not sound convincing. According to statistics quoted at the recent parliamentary hearing, in early 2000 there were about 10,200 registered media outlets in Ukraine, while only about 6,500 of them were really produced. Speaking to the parliament, Vice Prime Minister Mykola Zhulynsky announced that «most common founders who register [media] publications [include] commercial entities (58%) research institutions (11%), NGOs, associations (9%), educational

institutions (6.3%). «80% of newspapers are privately owned, and it does matter for us what money they are published for, what political purposes their owners pursue; <...> only few of them use services of the National Information Agency of Ukraine, other sources that provide objective information,» the Vice Prime Minister announced. While political preferences of private media outlets' owners are their own business as long as they are within the law, and no criteria of «objectivity» are good enough to disallow any interpretation, the statement seems to challenge the declared rejection of censorship and, particularly when made by the top government official in charge of the area, may sound as an attempt to impose the official opinion and censor other views. Meanwhile, views of the owner(s) have a critical impact on the general tone and preferences of specific media outlets, and practice has shown that any tensions or lack of understanding between media owners and relevant state agencies have almost immediate results for their media.

Another iceberg of media problems is closely linked to the mixed «censorship vs. pressure» relationship between media owners and/or sponsors with the state authorities. Quoting «briefly» the record of high-profile cases of violation of media rights and pressure against the media in Ukraine, Oleksandr Zinchenko referred to the halt on publication of the *Silski Visti*, the liquidation of the *Polityka* newspaper, and the «arrest and seizure of the print run of the *Svoboda*, the *Tovarysh*, the *Ukrainsky Burzhuaiznyi Natsionalist*», the harassment of the *Vechernie Vesti* newspaper by the tax administration, the suspension of publication of the *Pravda Ukrainy*, followed with dismissal and overt pressure on the newspaper's editor-in-chief Horobets.

Obviously, what was said during the parliamentary hearing is not news at all. Here are some of the most demonstrative examples. The problems of the *Pravda Ukrainy* began in early 1998, when the newspaper openly supported Pavlo Lazarenko and his political party, the *Hromada*. The scandal exploded on January 28, 1998, at the height of the parliamentary election race, when then Minister of Information of Ukraine Zinoviy Kulyk issued Order No. 7 prohibiting the state-owned publishing house, the *Presa Ukrainy*, to print the *Pravda Ukrainy* newspaper (*Vseukrainskie Vedomosti*, January 30, 1998). Long court procedure followed, and the scandal dragged for months and escalated to criminal charges against the editor-in-chief, Mr. Horobets. It took a year before the renewed *Pravda Ukrainy* was published again on January 19, 1999, with a new person as the editor-in-chief.

Similarly controversial were the efforts to close down the *Polityka* newspaper. The campaign was started in 1998 and did not contain any explicit political charges, although the newspaper was known among its readers and most of representatives of the political community for its blunt publications about a number of leading Ukrainian politicians. The newspaper was dragged into constant trials. The case, initiated against the *Polityka* by the law enforcement authorities was probably the most notorious one of its kind in Ukraine. In June 1997 the newspaper published an editorial titled «The Spy Novel», disclosing intelligence actions of some military unit deployed in Odessa, reportedly, against some NATO member states. The Security Service of Ukraine, SBU, reacted immediately by initiating a criminal lawsuit against the *Polityka*, claiming that the newspaper had given away the state secret. On October 6, 1998 the Pechersky borough court of Kyiv satisfied the demand of Deputy Attorney General of Ukraine, and the newspaper was closed down. The official verdict was to terminate the publication «for disclosing a state secret». Remarkably, the *Polityka* staff found out about the lawsuit and the judgement only on December 8, when the term of appeal had almost expired. According to editor-in-chief of the *Polityka*, Oleh Lyashko, the true reason for actions against the *Polityka* was the publication of an article by Yuri Karmazin, MP, about corruption in President Kuchma's close circle. However, later on Lyashko publicly stated: «in this case I do not see the President's hand in it, I think the people who have been acting deliberately want to let Leonid Kuchma down in order to show him as a constrictor of the press» (*Zerkalo Nedeli*, December 12, 1998). In March 1999, after a new round of trials, Oleh Lyashko wrote on behalf of the editorial board: «We have every reason to believe that the developments involving the *Polityka* occur to the knowledge and permission of Mr. Kuchma. If so, our best «response to Chamberlain» [a Soviet-time set phrase used to denote readiness to face the challenge] is to make a good newspaper» (*Polityka*, March 10, 1999). However, the next issue was not published. On March 20, 1999, following the judgement of the Moskovsky borough court of Kyiv, the publication was terminated as guilty of «disclosing a state secret». The editorial board responded by challenging the judgement with an appeal, but the appeal was rejected on June 23, 1999. On June 21, 1999, the Pechersky borough state taxation administration ordered to block the newspaper's bank accounts. Critics of the executive branch pointed out to political motivation of repression against the newspaper. Ivan Chyzh, then chairman of the Parliamentary Committee for Freedom of Speech and Information, accused the executive branch of exerting political pressure on the newspaper and argued

that the executive branch «having monopolized a number of media outlets, started an utmost offensive against democratic gains in the information sphere in order to bring Leonid Kuchma to presidency again.» In one of his statements he referred to the termination of the Polityka in the same context as the pressure against the Pravda Ukrainy, and described the two cases as «closing down the media outlets [that are] unengaged or oppositional to the executive branch» (Vecherniy Kyiv, August 14, 1999).

The parliament's Human Rights Commissioner Nina Karpachova, delivering her annual report to the Verkhovna Rada at the end of 2000, referred to a rather unusual - for anyone who is not acquainted with Ukrainian media realities - combination: «while speaking about the freedom of speech, [we] remember the procurature, the police, the taxation administration, the CRU (i.e., the key fiscal Control and Verification Department], the UBOZ (i.e., the Department for Fighting Organized Crime).» Hence, visits of tax inspectors to newspaper editorial offices and TV stations remains a rather effective method of harassing the media. The practice was particularly widespread during election campaigns, though such case were not rare in the periods between elections either. A recent example of the 2000 is the «tax evasion» case of the Silski Visti, a major opposition newspaper. From the purely legal point of view such cases may not be interpreted as repression only, but rather can be viewed as efforts to make tax evaders pay up their tax debts. In this context the statement of chairman of the State Taxation Administration Mykola Azarov that «neither taxation pressure on the media nor on businesses exists» (Den, October 16, 1999) may be taken as logical. From the formal perspective, inspections by the tax police, fire inspectors and sanitary safety control officers are not against the law. While in some cases it is inappropriate to blame taxmen or fire inspectors of exerting pressure on the media, during election campaign periods some cases of «fire-fighting» provoked suspicion, as they were applied selectively only to the media that demonstrated their opposition to the regime. In this country's emergent market-oriented economy, economic methods of pressure have proved to be far more sophisticated and effective than political repression against the media.

It is worth noting some comments about the relations between the state authorities and the opposition media, made in 1999 by editor-in-chief of the Den newspaper, Larysa Ivshyna: «For three years that I have been the head of the newspaper, I have never received a telephone call from power bodies demanding that published or did not publish a particular material, or changed position; [I have] not been told whom the newspaper should support and whom it should criticize. Nowadays the authorities have other methods of pressure or influence on the opposition press - on fairly legal grounds a taxman or a fire inspector can come to the editorial office and give you hard time» (Vechirniy Kyiv, December 14, 1999).

The opinion is shared in 2001 by chairman of the Association of Journalists of Ukraine Igor Lubchenko: «as soon as a publishing house prints an issue of the Svoboda, it immediately gets surrounded by taxmen, firemen and other similar structures.»

Let's consider the opinion from outside Ukraine. The special interest shown by «taxmen» and «firemen» to the Ukrainian media in the context of the media relations with the Ukrainian state was noticed by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe during the 1999 election campaign. Then members of the Monitoring Committee suggested that the Ukrainian authorities announced «a moratorium on suppressing the media, particularly refraining from inspection of the media by tax and fire inspectors» (Vechirniy Kyiv, October 7 1999).

Apparently, the January 16 parliamentary hearing was a rehearsal of the forthcoming hearing on the media freedom in Ukraine, scheduled to take place at the Parliamentary Assembly of the Council of Europe on January 25, 2001. Speaking to the Ukrainian parliament at the January 16 hearing, member of the Parliamentary Assembly of the Council of Europe Andrzej Urbanczyk stated that the PACE was extremely worried about the situation in the Ukrainian information sphere, particularly about the investigation into the disappearance of journalist Georgy Gongadze (Ukrinform, January 16, 2001). Andrzej Urbanczyk was also quoted as saying that «Ukraine is also Europe, and Ukrainians are Europeans; therefore, these Ukraine's internal problems are, one may even say, internal problems of Europe. The fact that I have heard so much criticism during these debates, and [the criticism was] so frank, means that there is also a will to improve the state of affairs» (Studio 1+1, TSN, January 16, 2001). Some manifestations of the will always exist, particularly when Ukraine may be facing a challenge of being excluded from the PACE.

Obviously, the quoted statistics for frequency of visits of taxmen and fire inspectors to selected media

outlets cannot be compared with other data that are far more relevant for the description of the status of media freedom in Ukraine. According to the Association of Journalists of Ukraine, «from August 1991 in Ukraine 38 journalists died, their deaths being connected to their professional activities» (Holos Ukrainy, January 16, 2001). The sad list was started with the tragedy of Vadym Boiko in 1991, followed by a number of his colleagues, including more recent cases of Borys Derevyanko, Petro Shevchenko and Georgy Gongadze.

After visiting Ukraine in January, PACE representative Hanna Severinsen stated: «we see [that] in Ukraine journalists are afraid of speaking critically» (Den, January 12, 2001) and, therefore, of telling the truth and performing their professional duties adequately. Yet, it is worth noting that four years of organizing parliamentary hearing have produced some change in the officials' attitude to them and the general contents of the events. Today only collectors of parliamentary «antiques» may remember that at the first parliamentary hearing, «Freedom of Speech in Ukraine: Status, Problems, prospects» (April 1997) only 37 MPs stayed in the session hall one hour after the hearing began. The second, three-day parliamentary hearing was ignored by leaders of the government but attended by their second deputies. The attitude clearly and symbolically indicated the general attitude to the problem.

The parliamentary hearing of January 16, 2001 was more impressive in terms of both contents and official representation than previous efforts to get the state accountable for the status of media freedom in this country. Meanwhile, MPs failed to secure the nationwide radio broadcasting of the event by the national radio channel, UR-1, and too many MPs left the session hall after the break. Obviously, the hearing was not the result of the newly-adopted constructive position of the authorities, nor of a feeling of shared responsibility for ensuring respect for a universally recognized human right, but rather a follow-up to the tragedy involving Ukrainian independent journalist Georgy Gongadze. «Ukraine already has some experience: the journalists' «wave of freedom», the re-start of the Silski Visti, the tremendous social response to the «Gongadze case» - all these are signs that the conscious community does not want to be the state authorities' toy. It shapes its own opinion and demands on all branches of power to abide by declared democratic principles,» Oleksandr Zinchenko stated solemnly from the parliament's podium. However, such actions, no matter how important and representative they may be, are bound to remain traditional «air-shaking» unless the adopted decisions are enforced, unless there is respect for, and compliance with the law by all.

Quite often comments about suppression of freedom of speech in Ukraine are countered with a cynical argument that discussion of the lack of media freedom itself means that the freedom does exist. However, such «freedom» is rather limited in scope and predictable in impact it is able to produce. A variety of newspapers and electronic media, state-owned and state-controlled included, have repeatedly complain that laws that guarantee the media freedom do not function properly. Hence, it is not the matter of laws and special measures of «state support» of the media, but rather the attitude of the system to this fundamental human right.

P.S.: Meanwhile, in accordance with Article 34 of the Ukrainian Constitution, «Everyone is guaranteed a right of freedom of thought and speech, free expression of his views and beliefs. Everyone is free to collect, store, use and disseminate information orally, in writing or through other method of his choice».